

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

December 30, 2004

In Reply Refer To:
CenterPoint Energy Gas
Transmission Company
Docket No. RP05-111-000

CenterPoint Energy Gas Transmission Company
P.O. Box 21734
Shreveport, LA 71101

Attention: Mr. Lawrence O. Thomas
Director, Rate & Regulatory

Reference: Letter Order Accepting Revised Tariff Sheets, Subject to Condition

Dear Mr. Thomas:

1. On December 1, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing proposed tariff sheets to add a new provision to address local distribution company (LDC) unbundling in section 11.2 of the General Terms and Conditions of its tariff.¹ Proposed section 11.2, Provision to Address Unbundling, states, "Transporter and Shipper may negotiate terms to be included in a Service Agreement to address the allocation of market and regulatory risk (including mechanisms to adjust applicable Contract Limitations under firm Service Agreements) resulting from a Shipper's unbundling of the sales and distribution services rendered by its local distribution system when such unbundling is required pursuant to an order of a governing authority having jurisdiction." As discussed below, we accept and suspend the proposed tariff sheets to become effective the earlier of June 1, 2005 or further order of the Commission, subject to conditions. This action benefits the public because it assures that CEGT's proposed tariff provision will be consistent with Commission policy regarding the allocation of unbundling risks between the pipeline and their LDC shippers.

¹ First Revised Sheet Nos. 452 and 453 to FERC Gas Tariff, Sixth Revised Volume No. 1.

I. Notice, Interventions and Protests

2. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 74,509 (2004) with comments, protests or interventions due on or before December 13, 2004 as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

3. Arkansas Gas Consumers, Inc. (AGC) filed comments objecting to CEGT's proposed revision, stating that CEGT has failed to explain the origin or the need for such a revision to the CEGT tariff or to identify the expected beneficiary of the tariff change. AGC states that the proposed revision would give LDCs the opportunity to renegotiate significant portions of their contracts, particularly benefiting CenterPoint Energy Arkla (Arkla), CEGT's affiliate, while leaving out non-LDC commercial and industrial shippers which it believes are also subject to significant economic and regulatory risks, and the costs of any adverse revenue impact will be spread among CEGT's other customers in a future rate case. AGC suggests that the current provision is similar to the provision previously addressed in *CEGT*,² where it claims the Commission determined that such an opportunity to reduce contract demand quantities must be made available to all shippers on a non-discriminatory basis. AGC requests that the Commission hold an evidentiary hearing to determine whether section 11.2 is just and reasonable and thereafter either reject section 11.2 or require CEGT to revise its section 11.2 so as to make the benefits of the re-negotiation provision available in situations other than those involving LDC unbundling.

II. Discussion

4. The Commission will accept the instant filing subject to suspension until the earlier of five months from the date of this order or further order of the Commission and subject to the requirement that CEGT clarify its proposed tariff provision. Here CEGT is proposing to grant contract reduction rights to LDCs adversely affected by regulatory unbundling. CEGT states that the risk faced by a regulated LDC, if its regulatory agency changes the regulatory structure under which it operates, is a different risk than that which any business entity faces in a competitive market. This is because LDCs have a

² See *CenterPoint Energy Gas Transmission Co.*, 104 FERC ¶ 61,281 at P 41 (2003).

regulatory obligation to serve high priority captive customers and its customer base is much wider. CEGT asserts that regulatory unbundling changes the amount of risk an LDC has under its contracts with a pipeline more than unbundling would change the risks for other shippers since they are less likely to be dependent on the demand of other customers. CEGT further explains that it will offer to negotiate such provisions on a not unduly discriminatory basis and will report any such provisions as a “special detail” in its transactional postings as required by 18 C.F.R. § 284.13(b)(1)(viii).³

5. AGC contends that in *CEGT* the Commission has determined that such an opportunity to reduce contract demand quantities must be made available to all shippers on a non-discriminatory basis. AGC’s interpretation of *CEGT* as requiring that contract demand reductions must be made available to all shippers is incorrect. *CEGT* merely states that pipelines may only negotiate such provisions if the pipeline’s tariff provides for the negotiation of such changes pursuant to generally applicable conditions set forth in its tariff and requires that negotiations be on a non-discriminatory basis. Contrary to AGC’s contention, in *Columbia Gulf* the Commission approved a similar tariff provision under which the pipeline limited the negotiation of customer-specific contract demand reduction provisions to LDCs affected by state unbundling programs.⁴ Moreover, in *ANR*,⁵ the Commission did not require pipelines to offer identical contract demand adjustment provisions to all customers without regard to their varying circumstances. Rather, the Commission stated that pipelines may propose tariff provisions under which they may retain the ability to offer contractual demand adjustment provisions tailored to

³ See, e.g., *Trunkline Gas Co. LLC*, 108 FERC ¶ 61,224 at P 7 (2004); *Columbia Gas Transmission Corp.*, 107 FERC ¶ 61,130 at P 10 (2004); *ANR Pipeline Co.*, 102 FERC ¶ 61,235 at P 11 (2003).

⁴ *Columbia Gulf Transmission Co. (Columbia Gulf)*, 105 FERC ¶ 61,351 (2003) (“accepting the proposal to permit Columbia Gulf and LDCs meeting certain criteria to mutually agree to include in their service agreements contract demand reduction rights in the event of regulatory unbundling and restructuring; adding flexibility in making contract decisions while protecting a pipeline’s right to reasonably limit contract demand reductions”). *Florida Gas Transmission Co.*, 101 FERC ¶ 61,401 at P 10 (2002); *ANR Pipeline Co.*, 99 FERC ¶ 61,310 at p. 62,321 (2002), *order on reh’g*, 101 FERC ¶ 61,246 (2002) (“under Commission policy, pipelines are not required to permit shippers to terminate or reduce their contractual obligations to pay for reserved capacity before the end of their contract terms; pipelines may offer such a right on a voluntary basis, so long as there is no undue discrimination among shippers.”)

⁵ *ANR Pipeline Co. (ANR)*, 98 FERC ¶ 61,175 at 61,654 (2002).

the individual circumstances of different classes of customer as long as similarly situated customers are treated similarly. As such, AGC has not shown the tariff provision unduly discriminates against non-LDC shippers.

6. In summary, it is reasonable for CEGT to limit the right to negotiate contract demand reduction provisions only to LDCs adversely affected by regulatory unbundling. We have specifically stated on numerous occasions that it may be reasonable for a pipeline to tie contract demand reduction rights to certain events, one of which is retail unbundling.⁶ As previously discussed, the Commission has approved similar provisions in other cases. However, while the concept is acceptable, the Commission concludes that the proposed tariff language is overly broad. CEGT's proposed tariff language gives it broad authority to negotiate contractual provisions to address the allocation of market and regulatory risk associated with LDC unbundling, identifying contract demand reduction provisions only as an example of the type of provision it would negotiate. The language as filed could thus be construed to permit the negotiation of other unspecified terms and conditions of service, which is against Commission policy.⁷ Therefore CEGT must revise the proposed tariff language to specify the conditions it will negotiate or renegotiate. To the extent it wishes to negotiate terms other than contract demand reduction provisions, it must specify in the tariff what those terms are. Until the filing is revised, the Commission concludes that it cannot find that the proposed tariff is just and reasonable and not unduly discriminatory. Therefore pursuant to section 4 of the Natural Gas Act, the proposed tariff will be suspended until the earlier of June 1 or further order of the Commission to assure that terms and conditions of service will not be included in any renegotiated contract.⁸

⁶ See e.g., *ANR Pipeline Co.*, 97 FERC ¶ 61,223 at p. 62,017, n. 10 (2001); *Tennessee Gas Pipeline Co.*, 97 FERC ¶61,225 at p. 62,030, n. 14 (2001); *Midwestern Gas Transmission Co.*, 103 FERC ¶ 61,259 at P 4 (2003).

⁷ The Commission has determined that negotiated terms and conditions of service include any provisions that result in a customer receiving a different quality of service than that provided to other customers under the pipeline's tariff. *Dominion Transmission, Inc.*, 93 FERC ¶ 61,177 (2000). The Commission will, however, permit the implementation of negotiations resulting in deviations from the pipeline's form of service agreement, so long as such changes do not change the conditions under which service is provided and do not present an undue risk of undue discrimination. *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,001-02 (2001).

⁸ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,197 (1990) (five month suspension).

7. For these reasons we deny AGC's protest that the Commission require CEGT to offer similar contract demand reduction rights to non-LDC shippers. Accordingly, we accept the proposed tariff sheets, subject to a 5 month suspension to be effective June 1, 2005, and subject to the condition stated in the body of this order.

By direction of the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.